

REMARKS***Status of the claims***

Claims 1-82 were pending in the present application. By virtue of this response, claims 1-19 and 22-82 have been cancelled, claims 20 and 21 have been amended, and new claims 83-149 have been added. Accordingly, claims 20-21 and 83-149 are currently under consideration.

With respect to all amendments and cancelled claims, Applicants have not dedicated or abandoned any unclaimed subject matter. Applicants reserve the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

Amendments to the specification

An inadvertent error is corrected by the amendment to the specification. No new matter is added.

Claim amendments

Claims 1-19 and claims 22-82 have been cancelled, without prejudice.

The amendments to claims 20 and 21, as well as new claims 83-149, are fully supported by the original application. Due to the cancellation of claim 1, claims 20 and 21 have been amended to be in independent claim format. A non-exhaustive listing of support for new claims 83-149 is provided in the Table 1, below.

Table 1. Support for New Claims

New claim(s)	Support in application as filed includes:
83, 114	original claim 2
84, 115	original claim 3
85, 116	original claim 4

86, 117	original claim 5
87, 118	original claim 6
88, 97, 103, 119, 128, 134	original claim 7
89, 98, 104, 120, 129, 135	original claim 8
90-91, 99, 105-106, 121-122, 130, 136-137	original claim 9
92, 123	original claim 10
93, 124	original claim 11
94, 125	lines 18-23 of paragraph [0115]
95, 126	lines 23-24 of paragraph [0115]
96, 127	original claim 12
100, 131	original claim 13
101, 132	original claim 14
102, 133	original claim 15
107, 138	original claim 16
108, 139	original claim 17
109, 140	original claim 18
110, 141	original claim 19
111, 142	lines 4-6 of paragraph [0006]
112	lines 1-3 of paragraph [0011]
113	lines 9-10 of paragraph [0005], lines 8-10 of paragraph [0012]
143	lines 1-2 of paragraph [0102]
144	lines 1-4 of paragraph [0105]
145	paragraph [0106]
146, 147	paragraph [0107] – [0108]
148, 149	lines 46-52 of paragraph [0153]

No new matter is added by the amendment to the claims.

Restriction requirement/election of species

In response to the restriction requirement, Applicants hereby elect Group I (claims 20-21, as amended, and new claims 83-149), for continued examination.

The Examiner has also required Applicants to elect a specific mutation recited in claims 9-11 (i.e., a mutation in one or more gene selected from the group consisting of *phrB*, *uvrA*, *uvrB*, *uvrC*, *uvrD* and *recA*). Applicants respectfully traverse this election of species requirement.

Although claims 9-11 have been cancelled by this Amendment, species corresponding to those previously presented in claims 9-11 are now indicated in new claims 90-93, 99, 105-108, 121-124, 130, and 136-139. Applicants assert that searching and examining claims directed to the finite number of species in a “mutation in one or more gene selected from the group consisting of *phrB*, *uvrA*, *uvrB*, *uvrC*, *uvrD* and *recA*” presents no serious burden for the Examiner. All of these genes encode DNA repair enzymes. Furthermore, the *uvrA*, *uvrB*, *uvrC*, *uvrD* and *recA* genes all encode DNA repair enzymes associated with the repair of interstrand crosslinks. Accordingly, Applicants respectfully request withdrawal of the requirement for election of a single species from the mutations recited in former claims 9-11.

If the Examiner is unwilling to withdraw the election of species requirement, Applicants respectfully request that the election requirement be modified so that a mutation in one or more gene selected from the group consisting of *uvrA*, *uvrB*, and *uvrC* (i.e., a mutation in *uvrA*, *uvrB*, and/or *uvrC*) may be elected. Again, Applicants assert that examination of such a finite number of species would not present any undue burden for the Examiner.

In the event that the Examiner does not find Applicants’ arguments to withdraw or modify the election of species requirement persuasive, Applicants elect the following species, with traverse: a mutation in *uvrA*. Claims readable on the elected species include 20-21, 83-91, 95-106, 108-122, 126-137, and 139-149.

Applicants' election is made without prejudice. As noted by the Examiner, upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which depend from or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

Applicants expressly reserve Applicants' right under 35 U.S.C. § 121 to file a divisional application directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

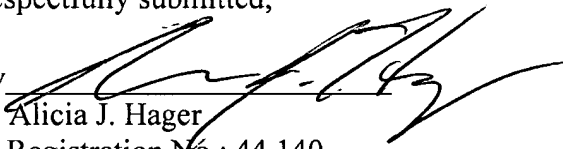
Applicants request examination of the elected subject matter on the merits.

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 282172002800. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: November 3, 2006

Respectfully submitted,

By


Alicia J. Hager

Registration No.: 44,140

MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, California 94304-1018
(650) 813-4296